

IN THE MATTER OF LICENSE NO. 312287 AND MERCHANT MARINER'S
DOCUMENT No. Z-301476

Issued to: Robert L. WHITE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1885

Robert L. WHITE

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 8 April 1969, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's license for three months on twelve month's probation upon finding him guilty of negligence. The specification found proved alleges that while serving as pilot on board SS MEADOWBROOK under authority of the license above captioned, on or about 4 May 1968, Appellant wrongfully failed to navigate said vessel with due caution while in restricted waters, to wit: Houston Ship Channel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence the testimony of three witnesses.

In defense, Appellant offered in evidence the testimony of a witness and several documents.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending Appellant's license for a period of three months on twelve month's probation.

The entire decision was served on 17 April 1969. Appeal was timely filed on 9 May 1969, and was perfected on 19 October 1970.

FINDINGS OF FACT

On 4 May 1968, Appellant was serving as pilot on board SS MEADOWBROOK while the ship was proceeding north in the Houston Ship Channel. In view of the disposition to be made of this case, no further findings need be stated.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The nature of the action to be taken here renders unnecessary a spelling out of Appellant's points. Discussion will be had in the OPINION below.

APPEARANCE: Sewell, Junell & Riggs, Houston, Texas, by Thomas S. Terrell, Esq.

The first question I encounter here is one of jurisdiction. Jurisdiction must be alleged and proved. It was properly alleged here that Appellant was at the time serving under authority of his license, and it was asserted that he had been negligent, a matter cognizable under R.S. 4450 (46 U.S.C. 239).

When the Investigating Officer rested his case, there was not a shred of evidence linking Appellant to the assertions in the allegations or even to the ship. When counsel pointed out this deficiency, the Investigating Officer moved to reopen so that he could obtain and present documentary evidence that Appellant was serving on MEADOWBROOK at the time. He never did present such evidence and gave no reason for his failure to produce it. To save time, counsel finally agreed to stipulate that Appellant was the pilot aboard MEADOWBROOK at the time in question. The stipulation did not include an admission that Appellant was serving under authority of his Federal License.

It cannot be inferred from this stipulation that MEADOWBROOK was a coastwise seagoing steam vessel not sailing on register, such that Appellant must have been a pilot required under 46 U.S.C. 364; nor can it be inferred that Appellant's holding of a Federal pilot's license was a condition of his employment aboard the vessel.

The case could be remanded for ascertainment of whether the jurisdictional basis existed, distasteful as it might be to have to take such action to close such a fundamental gap in the record but a cumulation of other errors or questionable procedures, induces me not to follow such a course but to dismiss the charges.

ORDER

The order of the Examiner dated at Houston, Texas, on 8 April 1969, is VACATED. The charges are DISMISSED.

T.R. SARGENT
Vice Admiral, U.S. Coast Guard
Assistant Commandant

Signed at Washington, D.C., this 7th day of August 1972.

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